

NONP 6313 LAW AND NONPROFIT ORGANIZATIONS FINAL EXAM

ANSWERS TO QUESTION 1

As Executive Director of Crossroads Children's Home, Inc. In laying out a plan for the Board to review and approve, I will add in the lobby and fundraising plans the following topics to be addressed by the Board, my recommendations and concerns added:

1. Operating Crossroads Children's Home, Inc. above its approved capacity:

I will present before the Board the implications of operating the children's home above the approved capacity of 50 children and housing 60 children as an urgent matter for the Board to discuss and review.

Operating Crossroads Children Home Inc. above the approved capacity of 50 children in the state of Oklahoma as a nonprofit corporation could have several implications:

- Legal implications: Operating above the approved capacity could potentially violate state regulations and licensing requirements for childcare facilities. This could lead to fines, penalties, or even the revocation of the organization's license to operate.

- Safety concerns: Overcrowding in a childcare facility can compromise the safety and well-being of the children in the care of Crossroads Children Home Inc. It may lead to a lack of adequate supervision, increased risk of accidents, and difficulties in providing quality care and services to all children.
- Quality of care: Operating above capacity can strain resources and staff, affecting the quality of care provided to the children. This can impact the children's physical, emotional, and developmental well-being.
- Reputation damage with members of the public: Failing to comply with regulations and providing subpar care can damage Crossroads Children Home Inc.'s reputation in the community and among donors, potentially leading to a loss of trust and support.
- Financial implications: Dealing with legal issues, fines, and potential closures due to operating above capacity can have significant financial implications for the organization. It may lead to increased costs, loss of funding, and potential financial instability.

Operating Crossroads Children Home Inc. above the approved capacity in the state of Oklahoma as a nonprofit corporation can have serious

consequences for the organization, the children in its care, and its stakeholders.

My recommendation: Crossroads Children Home Inc. should adhere to state regulations and ensure that it is providing high-quality care in a safe and supportive environment for all the children it serves.

2. Budget for the Building Expansion Plan:

As the Executive Director, I will with the aid of the Treasurer, Bookkeeper, and relevant staff develop the budget for the expansion of the childcare facility.

- Present it to the Board for review and approval. This budget will reflect all incomes expected from the \$5.00 to be added to the petitions filed in Oklahoma courts through the Crossroads Children Home Inc. proposed lobby.
- Discuss the projected timeline, budget, and potential challenges in the construction process.
- Outline the expected benefits of expanding the children's home and the impact on the organization's mission and services to the community.

My recommendation: Conduct a thorough cost-benefit analysis, feasibility study, and risk assessment to determine the viability of the building expansion plan before proceeding.

3. Fundraising and Lobbying Strategy:

Though organizations that are exempt from federal income taxation under section 501 (C) are prohibited from devoting more than an insubstantial part of their activities to lobbying Crossroads Children Home may take advantage of the election of section 501 (h) of the code which allows charitable organizations to engage in legislative lobbying activities, so long as they only amount to an insubstantial” of their activities.

Crossroads Children Home Inc. as a tax-exempt nonprofit corporation can lobby for this \$5.00 fee by presenting data and research on the benefits of its children program in the state of Oklahoma, and the need for the expansion of its facility for children in the state. I will also highlight the benefits of how it would positively impact the lives of children in need in the state. Therefore, as Executive Director of Crossroads Children Home, I will outline the proposed lobbying efforts to add a \$5.00 fee to court petitions in the State of Oklahoma to the Board for review and approval.

.Additionally, I could work with lawmakers and other stakeholders to raise awareness about the issue and gather public support for the fee to be added to every petition to be filed in Oklahoma courts. As Executive Director of Crossroads Children Home Inc. I can also collaborate with other organizations and advocates who are working on similar issues to strengthen the overall case for the fee addition. By building a coalition of supporters, we can demonstrate to lawmakers and the public that there is widespread support for the fee and the cause it will fund. Furthermore, Crossroads Children Home Inc. could engage in public outreach and education campaigns to inform the public about the fee and its purpose. We could also make ourselves available to answer any questions or address any concerns that individuals may have about the fee. Overall, by using a combination of data, research, collaboration, advocacy, and public outreach, Crossroads Children Home Inc. can effectively lobby for the \$5.00 fee to be added to every petition filed in any court in the state of Oklahoma to raise funds for the expansion of our children facility to care for children in need.

- Discuss the potential impact of the fee on petitioners and the public perception of the fundraising method.
- Consider alternative fundraising strategies to diversify revenue sources and mitigate risk.

My recommendations:

- Crossroads Children Home Inc. as a 501(c)(3) tax-exempt corporation should develop fundraising tactics subject to appropriate disclosure and solicitation rules and laws in the state of Oklahoma with consultation with the counsel and the relevant committees.

- Crossroads Children Home Inc. must also consider during the board meeting how to manage charitable acknowledgment

- Fundraising or collaboration agreement is strongly encouraged

- Provide a comprehensive analysis of the feasibility and ethical implications of lobbying for the court petition fee, as well as explore other fundraising options to ensure the long-term sustainability of the project.

- I will also recommend that Crossroads file IRS form 5768 (Election/Revocation of Election by an Eligible Section 501 (C) (3) Organizations to make Expenditures to influence Legislation). Crossroads Children Home Inc. filing this form, which is also known as form “taking the 501 (h) election” allows Crossroads Children Home Inc. to opt to have the IRS measure its lobbying activities by its objective expenditure test rather than by a subjective “insubstantial” amount of activities test. Thereby safeguarding its nonprofit status while adopting a more objective and friendlier standard to measure its lobbying activities.

My concern: If the lobbying expenditure amount of \$10,000,000.00 set by Crossroads Children Home Inc. is exceeded, there is a requirement to pay an exercise tax of 25% of the amount that exceeds the expenditure limit.

4. Conflict of Interest and Unethical Business Standards using Schedule Bs of another public Charity.

It is unethical to use the donor list and schedule Bs of another public charity to get donors and plan for the fundraising for Crossroads Children Home, Inc.

A nonprofit corporation has ethics and business conduct codes that apply to directors, senior management, agents, and employees. Therefore using the schedule Bs of another public charity for the funding need of Crossroads Children Home, Inc. is against ethical business standards and must be reviewed by the Board of Crossroads Children Home, Inc. and the Executive Director.

As a Director of Crossroads Children Home, Inc., there is a special duty to protect the integrity of the corporation by ensuring that all activities adhere to legal and moral standards. Hence, as Executive Director I will consult with personal counsel on the legality or otherwise of using the schedule Bs of another public charity if there is a need for disclosure of this material conflict of interest by the director involved.

Take the matter to a full board meeting and ensure it's discussed and recorded in the corporation's minutes.

Review in detail the plan of the director to leverage the donor list and schedule Bs of another public charity to fund the remaining cost of the new facility at Crossroads Children Home, Inc. because using the schedule Bs of another public charity for the funding needed at Crossroads Children Home, Inc is against ethical business standards and must be properly reviewed to avoid any form of embarrassment to the corporation and where necessary, repudiate all transactions involving the use of the schedule Bs of the other public charity.

The director involved in this conflict of interest and unethical business practice needs to disclose his affiliation with the other public charity using form 990 because having access to schedule Bs (confidential document) of the public charity presents a material conflict of interest with his role as Director of Crossroads Children Home, Inc.

It is important to note that lack of disclosure of this conflict of interest in the fundraising plan on form 990 exposes both the affected director and the rest of the board of Crossroads Children Home, Inc to greater risk in the event of litigation, the nondisclosing director, and in some instances, even the disinterested directors who supported the use of the Schedule Bs of the other public charity will have the burden of proving after the fact whether the transaction was fair or not.

The disclosure also enable the corporation to evaluate the proposed transaction in terms of fairness as well as for its impact on public image of the corporation.

My recommendation: consult adequately with legal counsel to ensure compliance with privacy regulations and ethical standards when if such donor information from another public can be used in the fundraising plan for Crossroads Children Home Inc.

The Director apart from the disclosure of this conflict of interest, may be asked to recuse himself from the board of Crossroads Children home and its fundraising efforts to avoid bringing the organization to disrepute.

I recommend that Crossroads Children Home, Inc should adopt and adhere to written conflict of interest policy. The Internal Revenue Code (IRC) form 990 which require that all directors and other persons having potential influence over any corporation fill out annual statements disclosing all of their significant affiliations as well as contacts with entities doing business with the corporation.

I also recommend that the other public charity whose schedule Bs (donor list) is to be used by the the director at Crossroads Children Home Inc. Must exercise care to protect its confidential and propriety information.

There is a possibility that directors, employees, volunteers and others may have access to such data or materials. Therefore, the nonprofit corporation should adopt a confidentiality policy and should take reasonable precautions by putting passwords, limiting distribution or simply stamping such information as confidential.

My overall Concerns:

- Ethical considerations: Ensure all fundraising activities and strategies adhere to ethical standards and align with the organization's mission and vision.
- Legal compliance: Verify that all lobbying efforts, use of donor information, and fundraising activities comply with tax laws, nonprofit regulations, and privacy laws.
- Stakeholder communication: Communicate transparently with all stakeholders, including donors, board members, staff, and the community, regarding fundraising initiatives and the building expansion plan.

By addressing these topics and recommendations in the plan for the Board's review and approval, the Executive Director can facilitate informed decision-making and ensure the successful implementation of the fundraising efforts for Crossroads Children's Home, Inc and the expansion of its facility to accommodate more children.

ANSWERS TO QUESTION 2

Hire Nancy Blu as an Independent Contractor

The US Supreme Court has repeatedly emphasized that the test for whether an individual is an employee or independent contractor under the FLSA is one of “economic reality.” Under this test, the “technical concepts” used to label a worker as an employee or independent contractor do not drive the analysis, but rather it is the economic realities of the relationship between the worker and the employer that is determinative.

In *United States v. Silk*, 331 U.S. 704, 712 (1947), an early case applying an economic realities test under the Social Security Act, the Supreme Court acknowledged that “probably it is quite impossible to extract from the statute a rule of thumb” regarding the limits of the employment relationship. The Court suggested that federal agencies and courts “will find that degrees of control, opportunities for profit or loss, investment in facilities, permanency of relation and skill required in the claimed independent operation are important for decision.” The Court cautioned that no single factor is controlling and that the list is not exhaustive. The Court went on to note that the workers in that case were “from one standpoint an integral part of the businesses” of the employer, supporting a conclusion that some of the workers in that case were employees. Under the Fair Labor Standards Act and using the Economic reality test, an Employee can be distinguish from an Independent contractor using the following six factor analysis:

Nature and degree of control

Degree of permanence of the work and relationship

Investments by worker and the potential employer

Extent to which the work is performed

Employer's business(is it critical, necessary, central)

Specialized skills and Initiative. However, no one factor determine if it's an employee or Independent Contractor but examining the circumstances, I will counsel Child Advocacy Network (CAN) to hire Nancy Blu as an independent contractor rather than an employee. This is because Nancy Blu is being brought on specifically to organize a special event and facilitate it, which is a one-time project that does not require long-term relationship. Hiring her as an independent contractor allows for flexibility in terms of engagement, setting her own work schedule based on the timeline of the special event, setting her payment for the work to be done to organize this special event, and does not require providing benefits or adhering to labor laws for employees, this is to say that the Fair Labor Act does not apply in this relationship. Additionally, since CAN does not have a special event staff member or development personnel on staff, it makes sense to bring in a independent contractor with expertise in this area to execute the project effectively and according the timeline.

Since Nancy Blu is to be hired as an independent contractors for the VOCA federal grant project, there is need to sign an Independent Contractor Agreement with Nancy Blu. As an Independent contractors, she must supply

proof of workers' compensation or an Affidavit of Exempt Status Under the Workers' Compensation Act. Independent contractors must supply a completed Form W-9 or the contract must have payee identification or Social Security Number and address of the contractor or in the case of a corporation that requires a 1099, the EIN. IRS Form 1099 Miscellaneous or 1099 NEC will be issued if required by the IRS.

The procedure for hiring an independent contractor is to prepare a contractual agreement detailing services to be performed and the timeline for completion; rate of pay and when payment will be made; and, what expenses, if any, will be reimbursed.

After the appropriate approval process, the ..Executive Director or President and the independent contractor should sign. When fully executed, one copy should remain with the Nancy Blu as an independent contractor and a copy will be maintained as supporting documentation for any payments. If services are extended beyond the contract's time frame or additional money is required, a new contract, or an addendum, must be in writing following the same approval process of the original contract.

2. Request on 10 Employee to attend and volunteer at the special event not permissible

Volunteers must provide their services freely for public service, religious or humanitarian objectives, does not displace or perform work that is ordinarily performed by regular employees in this selling event tickets and cleaning up,

It is important to distinguish between volunteering for personal interest or community service and volunteering for organizational work-related activities. Therefore, the request for all ten employees to attend the special event and assist in selling admission tickets and cleaning up while stipulating that they are volunteering their time is not permissible If their participation is:

1. Coerced and not voluntary
2. if the special event is happening at the same time of the regular work.
3. If the activities specified for the volunteers at this special event are services they are paid to perform by the nonprofit corporation.
4. If performance of the activities will prevent some other persons from being paid for the activities.

If the employees are required or expected to participate in this work-related activities, such as selling tickets and cleaning up, they should be compensated for their time as it falls within the scope of their regular duties. In this case, the employees would likely be considered as working and should be compensated accordingly. While a volunteer does not receive compensation other than expenses, reasonable benefits, or nominal fees.

3. **Nancy Blu should be classified as an exempt employee.** Exempt employees are not entitled to overtime pay under the Fair Labor Standards Act (FLSA). Since Nancy will be providing development and special event assistance, it is likely that she will be working according to her time in line with the event schedule, sets the price for the work to be done in agreement with the Executive Director. Additionally, Nancy Blu controls how her assistance for the event is to be delivered.